

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ERIKKA CHASTAIN,

Plaintiff,

v.

NEW ALBERTSONS, INC.,

Defendant.

2:12-CV-1790-LRH-CWH

ORDER

Before the court is defendant New Albertsons, Inc. (“Albertsons”) supplement to the petition for removal. Doc. #8.¹

Plaintiff Erikka Chastain (“Chastain”) initiated the present action against Albertsons. On October 11, 2012, Albertsons removed this action to federal court on the basis of diversity jurisdiction. Doc. #1.

On October 29, 2012, the court reviewed the removal petition and held that it was not clear from the complaint that the amount in controversy had been met. Doc. #7. The court granted defendants twenty days to establish the amount in controversy by submitting summary judgment type evidence to the court. *Id.* Thereafter, Albertsons filed the present supplement to its petition for removal. Doc. #8.

¹Refers to the court’s docket

1 Albertsons argues that the amount in controversy has been met because, although Chastain
2 has only suffered roughly \$34,000 in medical bills, she has requested lost wages and money for
3 ongoing treatment. *See* Doc. #8. Therefore, Albertsons argues that because Chastain has not
4 concluded treatment, “this matter is anticipated to exceed the minimum threshold of \$75,000.” *Id.*

5 The court has reviewed Albertsons’ supplement for removal and finds that Albertsons has
6 not established that the amount in controversy has been met. Generally, the amount in controversy
7 may be satisfied by all of a plaintiff’s claims for damages. *See Kroske v. U.S. Bank Corp.*, 432 F.3d
8 976, 980 (9th Cir. 2005). However, the mere possibility of future damages, including ongoing
9 medical treatment, is not sufficient to prove that the amount in controversy has been met. In order
10 to meet their burden for removal, Albertsons must present evidence indicating the amount of lost
11 wages and future medical treatment that Chastain seeks will, more likely than not, exceed the
12 amount needed to increase the amount in controversy to \$75,000. *See e.g., Gaus v. Miles, Inc.*, 980
13 F.2d 564, 567 (9th Cir. 1992).

14 Here, Albertsons has failed to provide the court with sufficient evidence to establish that the
15 amount in controversy will be exceeded by either lost wages or ongoing medical treatment
16 requested by Chastain. It has not shown that such an award of damages is a supportable claim in
17 this action, nor has it established that damages related to future medical treatment, if awarded, are
18 more likely than not to exceed the jurisdictional threshold. Thus, Albertsons has failed to meet its
19 burden to prove that the amount in controversy has been met. Accordingly, the matter shall be
20 remanded for lack of jurisdiction.

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1 IT IS THEREFORE ORDERED that the present action, case no. 2:12-cv-1790-LRH-CWH,
2 is REMANDED to the Eighth Judicial District Court for Clark County, Nevada.

3 IT IS SO ORDERED.

4 DATED this 27th day of November, 2012.



LARRY R. HICKS
UNITED STATES DISTRICT JUDGE